

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

FILED-ED4

DONALD SCHIMMER

Plaintiff,

v.

JAGUAR CARS, INC.,

Defendant.

DOCKETED
MAR 17 2003

03:00 PM 03/17/03

U.S. DISTRICT COURT

03C 1884

JUDGE AMY ST. EVE

NOTICE OF REMOVAL

MAGISTRATE JUDGE DOORICK

Pursuant to 28 U.S.C. § 1446, Defendant JAGUAR CARS, INC. ("Jaguar"), by and through its attorneys, NEAL GERBER & EISENBERG, hereby removes the state court action entitled *Donald Schimmer, Plaintiff v. Jaguar Cars, Inc., Defendant*, Civil Action Case No. 03 L 001813, filed in the Circuit Court of Cook County, Illinois. The complaint was filed on February 13, 2003 and Jaguar was served on February 27, 2003. This Notice of Removal is timely in that it is filed within thirty (30) days of the date of Defendant's receipt of the complaint. A copy of Plaintiff's Complaint and all other process, pleadings and orders served upon Defendant in this action are filed with this Notice as Exhibit A.

Removal is based on a Federal Statute, the Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A § 2301, 2310 et seq.

PRELIMINARY STATEMENT

1. Plaintiff Donald Schimmer, (hereinafter "Plaintiff") allegedly purchased a 2000 Jaguar XK8 from Town & Countree Auto Sales, Inc. on January 15, 2000. The vehicle identification number given in the complaint is SAJJA42C7YNA04212.

2. Shortly after Plaintiff purchased the vehicle, he started experiencing a number of problems with the vehicle.

3. On February 13, 2003, Plaintiff initiated this suit.

17

MAGNUSON-MOSS WARRANTY ACT

4. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A. §2310(3) (hereinafter the "Act") grants Federal jurisdiction and provides a basis for removal of this cause.

5. Plaintiff's complaint alleges that Jaguar violated the Magnuson-Moss Act by failing to comply with its written warranty.

6. The value of the vehicle that is the subject matter of this case is \$69,513.00.

7. Chapter 15 U.S.C.A. §2310(3) states the following:

(3) No claim shall be cognizable in a suit brought under paragraph(1)(B) of this subsection...

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit...

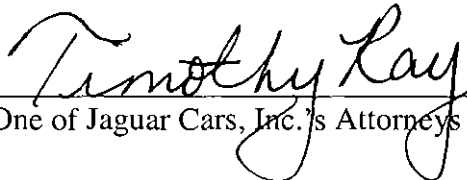
8. The amount in controversy in this case is in excess of \$50,000.

9. All Defendants are in agreement on removal of this matter to the United States District Court, Northern District of Illinois, Eastern Division.

10. Jaguar's Notice of Removal was filed contemporaneously in the United States District Court, Northern District of Illinois, Eastern Division.

Respectfully submitted,

NEAL GERBER & EISENBERG

By: 
One of Jaguar Cars, Inc.'s Attorneys

Timothy Ray
Robert M. Strom
NEAL GERBER & EISENBERG
2 North LaSalle Street, Suite 2300
Chicago, Illinois 60602
(312) 269-8000
A.R.D.C. #6230099

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION, COUNTY DEPARTMENT

DONALD SCHIMMER,

Plaintiff,

vs.

JAGUAR CARS, INC.,

Defendant.

)
) No. 03L 001813
) Return Date: CALENDAR Y
) BREACH OF CONTRACT

) PLEASE SERVE

) ~~Jaguar Cars, Inc.~~

) c/o CT Corporation Systems
) 208 S. LaSalle Street, Suite 814
) Chicago, Illinois 60604

SUMMONS

To the Defendant:

YOU ARE SUMMONED and required:

1. To file your written appearance by yourself or your attorney and pay the required fee in Room 602 of the Richard J. Daley Center, Chicago, Illinois 60602, at or before 9:30 A.M. on *....., 2001.
2. To file your answer to the complaint in Room 602 as required by Par. 3(c) in the Notice to Defendant below.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT, A COPY OF WHICH IS HERETO ATTACHED.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with Endorsement of service and fees, if any, immediately after service, and not less than 3 days before the day for appearance. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days before the day of appearance.

THERE WILL BE A FEE:
TO FILE YOUR APPEARANCE,
SINCE CLAIM IS OVER \$15,000.00,
THE FEE WILL BE \$120.00.

Witness FEB 13 2003, 2001

Clerk of the DOROTHY BROWN
FEB 27 2003 CLERK OF CIRCUIT COURT

Date of service , 2001

(To be inserted by officer on copy left with defendant or other person)

Name: Krohn & Moss, Ltd.
Attorney for: Plaintiff
Address: 120 West Madison Street, 10th Floor
City: Chicago, Illinois 60602
Telephone (312) 578-9428
Atty No. 33599



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION, COUNTY DEPARTMENT

DONALD SCHIMMER,

Plaintiff,

vs.

JAGUAR CARS, INC.,

Defendant.

No.

03L 001813

Return Date:

CALENDAR Y

BREACH OF CONTRACT

PLEASE SERVE

Jaguar Cars, Inc.

c/o CT Corporation Systems

208 S. LaSalle Street, Suite 814

Chicago, Illinois 60604

SUMMONS

To the Defendant:

YOU ARE SUMMONED and required:

1. To file your written appearance by yourself or your attorney and pay the required fee in Room 602 of the Richard J. Daley Center, Chicago, Illinois 60602, at or before 9:30 A.M. on *....., 2001.

2. To file your answer to the complaint in Room 602 as required by Par. 3(c) in the Notice to Defendant below.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT, A COPY OF WHICH IS HERETO ATTACHED.

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TO FILE YOUR APPEARANCE,

SINCE CLAIM IS OVER \$15,000.00,

THE FEE WILL BE \$120.00.

Witness **FEB 13 2003**, 2001

Clerk of the Circuit Court of Cook County

Date of service , 2001

(To be inserted by officer on copy left with defendant or other person)

Name: Krohn & Moss, Ltd.

Attorney for: Plaintiff

Address: 120 West Madison Street, 10th Floor

City: Chicago, Illinois 60602

Telephone (312) 578-9428

Atty No. 33599

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION, COUNTY DEPARTMENT

DONALD SCHIMMER,

Plaintiff,

vs.

JAGUAR CARS, INC.

Defendant.

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No.

03L 001813
CALENDAR Y
BREACH OF CONTRACT

FILED-2
2003 FEB 13 PM 12:15
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION
CLERK
DONALD SCHIMMER

COMPLAINT

NOW COMES the Plaintiff, DONALD SCHIMMER, by and through his attorneys,
KROHN & MOSS, LTD., and for its complaint against Defendant, JAGUAR CARS, INC.
alleges and affirmatively states as follows:

PARTIES

1. Plaintiff, DONALD SCHIMMER ("Plaintiff"), is an individual who was at all times relevant hereto residing in the State of Illinois.
2. Defendant, JAGUAR CARS, INC. ("Manufacturer"), is a foreign corporation authorized to do business in the State of Illinois, County of Cook, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including TOWN & COUNTRIE AUTO SALE, INC. ("Seller"). Manufacturer does business in all counties of the State of Illinois including Cook County, and maintains offices in the County of Cook, State of Illinois.

BACKGROUND

3. On or about January 15, 2000, Plaintiff purchased from Seller a 2000 Jaguar XK8 ("XK8"), manufactured and distributed by Manufacturer, Vehicle Identification No. SAJJA42C7YNA04212, for valuable consideration. (See copy of Plaintiff's Purchase Contract attached hereto as Exhibit "A").
4. The price of the XK8, including registration charges, document fees and sales tax, and excluding collateral charges, such as bank and finance charges, totaled more than \$69,513.00.
5. Plaintiff avers that as a result of the ineffective repair attempts made by Manufacturer, the XK8 cannot be utilized for personal, family and household use as intended by Plaintiff at the time of acquisition.
6. In consideration for the purchase of the XK8, Manufacturer issued and supplied to Plaintiff several written warranties, including a three (3) year or thirty-six thousand (36,000) mile factory warranty, as well as other standard warranties fully outlined in the Manufacturer's New Vehicle Limited Warranty booklet.
7. On or about January 15, 2000, Plaintiff took possession of the XK8 and shortly thereafter experienced the various defects and nonconformities listed below that substantially impair the use, value and/or safety of the XK8.
8. The nonconformities and defects described below violate the express written warranties issued to Plaintiff by Manufacturer.
9. Plaintiff delivered the XK8 to Manufacturer on numerous occasions.
10. Plaintiff avers that the XK8 has been subject to repair at least two (2) times for the same defect, and that the defect remains uncorrected.

11. Plaintiff brought the XK8 to Seller and/or an authorized service dealer of Manufacturer for various defects and nonconformities, including but not limited to:

- a. Defective suspension as evidenced by clunking noise while in reverse;
- b. Water leaks;
- c. Defective transmission as evidenced by vibration;
- d. Defective door as evidenced by wind noise, and difficulty to close;
- e. Defective alignment; and
- f. Any additional defects as contained on repair orders of Defendant's authorized dealerships.

12. After a reasonable number of attempts to cure the defects and nonconformities in Plaintiff's XK8, the Manufacturer was unable and/or has failed to repair the defects or the nonconformities or to replace the XK8, as provided in the written warranties.

13. Plaintiff justifiably lost confidence in the XK8's safety and reliability, and said defects and nonconformities have substantially impaired the value of the XK8 to Plaintiff.

14. Said defects and nonconformities could not reasonably have been discovered by Plaintiff prior to Plaintiff's acceptance of the XK8.

15. As a result of these defects, Plaintiff revoked his acceptance of the XK8 in writing on.

16. At the time of revocation, the XK8 was in substantially the same condition as at delivery except for damage caused by its own defects, non-conformities and ordinary wear and tear.

17. Manufacturer refused Plaintiff's revocation of acceptance, and continues to refuse to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.

19. The XK8 remains in a defective and unmerchantable condition, and continues to exhibit the above mentioned defects and nonconformities that substantially impair its use, value and/or safety.

20. Plaintiff has been and will continue to be financially damaged due to Manufacturer's intentional, reckless, wanton and negligent failure to comply with the provisions of its express and implied warranties.

COUNT I
BREACH OF WRITTEN WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

21. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this complaint.

22. Plaintiff is a purchaser of a consumer product who received the XK8 during the duration of a written warranty period applicable to the XK8 and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

23. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiff.

24. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

25. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiff's Complaint in that the XK8 was manufactured and sold after July 4, 1975, and costs in excess of ten dollars (\$10.00).

26. Plaintiff's purchase of the XK8 was accompanied by written factory warranties for any nonconformities or defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the XK8 to refund, repair, replace, or take other remedial action free of charge to Plaintiff with respect to the XK8 in the event that the XK8 failed to meet the specifications set forth in said undertaking.

27. Said warranties were the basis of the bargain of the contract between the Plaintiff and Manufacturer for the sale of the XK8 to Plaintiff.

28. Said purchase of Plaintiff's XK8 was induced by, and Plaintiff relied upon, these written warranties.

29. Plaintiff has met all of her obligations and preconditions as provided in the written warranties.

30. As a direct and proximate result of Manufacturer's failure to comply with its express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

31. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against Manufacturer.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

32. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this complaint.

33. The XK8 purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. § 2301(7) running from the Manufacturer to the intended consumer, Plaintiff herein.

34. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiff.

35. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety days from the date of purchase to perform services relating to the maintenance or repair of a motor vehicle.

36. Pursuant to 15 U.S.C. § 2308, Plaintiff's XK8 was impliedly warranted to be substantially free of defects and non-conformities in both material and workmanship, and thereby fit for the ordinary purpose for which the XK8 was intended.

37. The XK8 was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the vehicle contained in the contracts and labels.

38. The above described defects and non-conformities present in the XK8 render the XK8 unmerchantable, unsafe, and thereby not fit for the ordinary and essential purpose for which the XK8 was intended and as represented by Manufacturer.

39. As a result of the breaches of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the XK8.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE PURSUANT TO SECTION 2310(d)
OF THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

41. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this complaint.

42. Manufacturer's tender of the XK8 was substantially impaired to Plaintiff.

43. Manufacturer's tender of the XK8, which was substantially impaired to Plaintiff, constitutes a violation of 15 U.S.C. § 2310(d).

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- c. Such other and further relief that the Court deems just and appropriate.

COUNT IV
VIOLATION OF ILLINOIS NEW VEHICLE
BUYER PROTECTION ACT
MANUFACTURER

44. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this Complaint.

45. Plaintiff is a "Consumer" as defined by 815 ILCS 380/2(a).

46. Manufacturer is a "Purchaser" as defined by 815 ILCS 380/2(e).

47. The XK8 is a "new vehicle" as defined by 815 ILCS 380/2(c).

48. The Illinois New Vehicle Buyer Protection Act, 815 ILCS 380 ("Illinois Lemon Law") is applicable to Plaintiff's Complaint in that the XK8 was manufactured, sold and purchased after January 1, 1984.

49. Plaintiff took delivery of the XK8 on or about October 26, 1999.

50. The defective XK8 had been subject to repair by Manufacturer four (4) times in the first year/12,000 miles since delivery, and such nonconformity continues to exist.

51. Manufacturer has been given a reasonable number of attempts to conform the XK8 to its express warranties.

52. Manufacturer received prior direct written notification of the above-mentioned defects on behalf of Plaintiff on November 6, 2001 and has had an opportunity to correct the alleged defects. (See copy of revocation of acceptance letter, attached hereto and marked as Plaintiff's Exhibit "B").

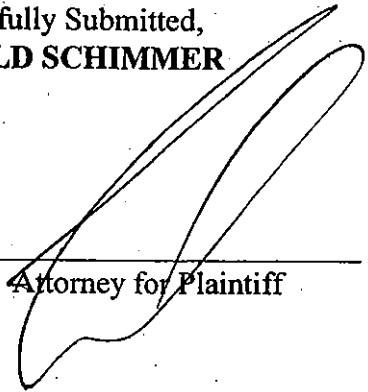
53. Manufacturer is unable to conform the XK8 to any of its applicable express warranties.

54. As a result of said nonconformities, Plaintiff is without the reasonable value of the XK8.

55. As a result of said nonconformities, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff respectfully demands this Court to order Manufacturer to either provide Plaintiff with a new vehicle of like model line, or otherwise a comparable motor vehicle as a replacement, or to accept the return of the XK8 from Plaintiff and refund to Plaintiff the full price of the XK8, including all collateral charges and attorneys' fees incurred by Plaintiff.

Respectfully Submitted,
DONALD SCHIMMER

By:  _____
Attorney for Plaintiff

KROHN & MOSS, LTD.
Attorneys for Plaintiff
120 West Madison Street, 10th Floor
Chicago, Illinois 60602
(312) 578-9428
I.D. No. 33599

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION, COUNTY DEPARTMENT**

DONALD SCHIMMER,

Plaintiff,

vs.

JAGUAR CARS, INC.

Defendant.

No.

SUPREME COURT RULE 222 AFFIDAVIT

NOW COMES the Plaintiff, DONALD SCHIMMER, by and through his attorneys,
KROHN & MOSS, LTD., and pursuant to Supreme Court Rule 222 states as follows:

Plaintiff's attorney, first being duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff with regards to the above-captioned matter.
2. I have personal knowledge regarding the facts and circumstances of the above-captioned matter.
3. The Plaintiff in the case seeks money damages greater than \$50,000.00.
4. Upon information and belief, I value the claim of Plaintiff to be greater than \$50,000.00.
5. Further Affiant sayeth not.

By: _____

Attorney for Plaintiff

EXHIBIT A



**MOTOR VEHICLE
CONTRACT OF SALE
(ORDER)**

Order Date NOV. 26, 1995

ENC. 10000 825-1039-9244

S210598.700 10/20/2010

Driver's Lic. No.

YEAR	MAKE	MODEL	BODY TYPE
2000	JAGUAR	XK8	COUPE
COLOR	UPPER	INTERIOR	STOCK NUMBER
TOPAZ	LOWER	BLACK INT.	ORDERED
PRICE		DATE TO	

9568

CHANDLER, J. H.	1911	1	1
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ACCESSORIES:

WEATHER-PROOFING
PAVEMENT SYSTEM
PREMIUM JOMBA PACKAGE
18" GRAY POLYMER CONCRETE

Title Owner		
Make Of Trade In		
Year	Body Type	
Mileage		
Mileage At Appraisal		
V.I.N. #		
Balance Owed (Good Und)		\$
Balance Owed To	Verified By	
Auditor		
Trade-In Allowance		\$
Cash Deposit With Order (Receipt #)	5000	00
Other (Receipt #)		
TOTAL CREDITS (Transfer To Left Column)	\$ 5000	00

Purchaser is responsible for and shall pay the amount in any by which the Seller is disadvantaged by the use of the Seller's services.

STATE OF MISSISSIPPI, DEPARTMENT OF REVENUE, DIVISION OF TAXATION, MEMPHIS, TENNESSEE.

WARRANTY INFORMATION

VEHICLE THE MANUFACTURER'S WARRANTY DOES NOT EXTEND WITH RESPECT TO THE VEHICLE AND FACTORY-INSTALLED ACCESSORIES IS THE MOST RECENT APPLICABLE PRINTED WARRANTY WHICH IS MADE SOLELY BY THE DEALER INSTALLED ACCESSORIES ARE NOT INCLUDED IN THE MANUFACTURER'S WARRANTY OF THE VEHICLE, AND MAY OR MAY NOT BE INCLUDED IN SEPARATE WRITTEN WARRANTIES WHICH ARE MADE SOLELY BY MANUFACTURER. 1-800-4-A-TOYOTA

USED: IF THE VEHICLE IS A USED VEHICLE, THE VEHICLE IS SOLD BY
DEALER AS IS - WITH ALL FAULTS.

1. INFORMATION ON DEMONSTRATION: THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERIDES ANY CONTRADICTORY DISCLOSURE IN THE CONTRACT OF SALE.

[illegible]

TOTAL ACCESSORIES		3
* 68,000.00	SALES TAX ON TOTAL PURCHASE	
	GROSS PRICE OF MERCHANDISE	
\$ 68,639.	TRADE DIFFERENCE NET LESS TAX BACK	
DEALER DOUGLAS' PAY \$44		
Deduction Tax		
SALES TAX (COMPUTED BY INCLINE ON THE WHOLE)		

FROM : SCHIMMER

FAX NO. : 8155397239

Feb. 20 2002 12:28PM P1

TOTAL CREDIT
TRANSFERRED FROM AT COLUMN:

BALANCE DUE ON DELIVERY

5009.90
3663.00

Terms of Payment of Balance Due on Delivery:

☒ CASH \$☐ CONSUMER CREDIT FINANCING
BY OR THROUGH DEALER.

Purchaser acknowledges that the Additional Terms and Conditions printed on the reverse side of this Order are a part of this Order. Both sides of this Order constitute a single agreement which supersedes any prior agreement or understanding between Dealer and Purchaser. Purchaser acknowledges reading, understanding and accepting this Order and the Additional Terms and Conditions printed on the reverse side of this Order and receipt of a completed and signed copy of this Order. This Order shall not become a binding agreement unless accepted in writing by Dealer or an authorized representative of Dealer.

THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS ORDER AND IN ANY SERVICE CONTRACT ARE INCORPORATED BY REFERENCE AND ARE A PART OF THIS ORDER.

BEFORE SIGNING READ BOTH SIDES OF THIS ORDER AND ANY SERVICE CONTRACT CAREFULLY.

ACCEPTED

By

THIS ORDER IS AN OFFER BY PURCHASER TO BUY THE VEHICLE. IF THE OFFER IS ACCEPTED BY THE DEALER IT BECOMES A COMPLETE CONTRACT OF SALE AND THE DEALER HAS NO OBLIGATION OR RESPONSIBILITIES NOT EXPRESSLY SET FORTH IN THE ORDER.

SAJJA 42C7YNA04212

\$ 60,483

69,513

included \$850
Faj

EXHIBIT B

Krohn & Moss, Ltd.

Main Office

120 West Madison, 10th Floor

Chicago, Illinois 60602

www.consumerlawcenter.net

Writer's Direct Number

(312) 578-9428 Ext. 216

Writer's Direct Facsimile

(312) 896-5969

Writer's Direct E-Mail

gmoss@consumerlawcenter.net

Licensed to Practice in Illinois

Also Located In:

Arizona

Georgia

Indiana

Ohio

Wisconsin

November 6, 2001

Jaguar Cars

Attn: Legal Department

555 MacArthur Blvd.

Mahwah, NJ 07430-2327

RE: Donald Schimmer v. Jaguar Cars

Our Client: Donald Schimmer

Vehicle: 2000 Jaguar XK8

Date of Delivery: January 15, 2000

VIN: SAJJA42C7YNA04212

Our File No.: I0110702L

Dear Sir or Madam:

Please be advised that this office represents the above-named individual regarding claims against Jaguar Cars pursuant to the Federal Magnuson-Moss Warranty Act and the Uniform Commercial Code with regard to the above-listed vehicle. Please direct all future contacts and correspondence to the office listed above.

HAVING BEEN FORMALLY NOTIFIED OF OUR REPRESENTATION, YOU ARE INSTRUCTED NOT TO CONTACT OUR CLIENT UNDER ANY CIRCUMSTANCES. DIRECT ALL INQUIRIES TO THIS OFFICE. IF YOU FAIL TO ACT IN CONFORMITY WITH THIS DIRECTIVE, INJUNCTIVE RELIEF WILL BE SOUGHT AGAINST YOU.

IN ADDITION, YOU ARE HEREBY NOTIFIED OF OUR ATTORNEYS' LIEN.

There were numerous non-conformities with my client's automobile for which relief is sought, and numerous attempts to repair the vehicle have been unsuccessful. There were also numerous violations of both Federal and State law in connection with the delivery and/or repair of the aforementioned vehicle. The primary non-conformities and violations include, but are not limited to:

1. Defective suspension as evidenced by clunking noise while in reverse;
2. Water leaks;
3. Defective transmission as evidenced by vibration;
4. Defective door as evidenced by wind noise, and difficulty to close; and
5. Defective alignment.

The non-conformities listed above constitute a substantial impairment of the use, value and safety of the subject vehicle. Accordingly, my client has had enough! Because of the inordinate amount of repairs within the applicable warranty period, my client has justifiably lost confidence in the vehicle.

As I am sure you are aware, the "Shaken Faith" doctrine under the U.C.C. states:

"For a majority of people the purchase of a new car is a major investment, rationalized by the peace of mind that flows from its dependability and safety. Once their faith is shaken, the vehicle loses not only its real value in their eyes, but becomes an instrument whose integrity is substantially impaired and whose operation is fraught with apprehension."

Zabriskie Chevrolet, Inc. v. Smith

Other courts have gone on to state that the vehicle owner that was plagued by a series of annoying minor defects which were never repaired after a number of attempts, could revoke. See Durfee v. Rod Baxter Imports.

Concerning the amount of grief a person need take with a vehicle, one court expressed the consumers lament in the following manner:

There comes a time when enough is enough - when an automobile purchaser, after having to take his car into the shop for repairs an inordinate number of times and experiencing all of the attendant inconvenience, is entitled to say, "That's all," and revoke, notwithstanding the seller's repeated good faith efforts to fix the car. Rester v. Morrow.

My client's repair history clearly shows there was a breach of the written warranty "based upon the generally accepted rule that an unsuccessful effort to remedy defects found to exist renders the warrantor liable; the buyer is not bound to allow him the opportunity or permit him to tinker with the article indefinitely in the hope that it may ultimately be made to comply with the warranty." Kure v. Chevrolet Motor Division, 581 P.2d 603, 608.

Therefore, you are hereby notified that my client is revoking his acceptance of the vehicle. He has directed us to demand the return of all funds paid towards this vehicle, the cancellation of the contracts, and compensation for his damages.

Please be advised that under U.C.C. § 2-711(3) my client has a security interest in the car for return of the total amount above, plus expenses in handling and inspecting the car. Until you pay this amount, my client will hold the car and use it to the extent necessary to preserve it, to protect its security interest, and to minimize your damages. Moreover, my client needs return of the monies listed above before substitute goods can be acquired. In addition, any attempt by you or your agents to repossess the car will be wrongful and will subject you to liability for conversion and for wrongful repossession under U.C.C. §§ 9-503 and 9-507 as well as other applicable Illinois Consumer Fraud remedies.

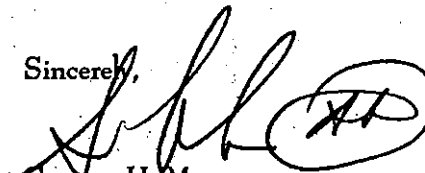
November 6, 2001

If the seller [or, if applicable the assignee, or any creditor subject to the FTC Holder Rule] has filed a financing statement covering the goods, I demand, pursuant to U.C.C. § 9-404, that you file a termination statement within ten days to terminate your security interest and forward a copy to this office. Since my client has revoked acceptance, there is no outstanding secured obligation. If you do not file a termination statement within ten days and cooperate in removing the lien, you will be liable under U.C.C. § 9-404(1) in the amount of \$100.00 plus any loss caused my client by your failure.

To avoid any further litigation, my client merely requests a refund for the defective product and will waive any incidental and consequential damages at this point. Our attorneys' fees are minimal at this stage and we would prefer to resolve this matter without the need for any more time spent on our part or on the part of your attorneys. Think of the time, money and effort both sides would save with a quick resolution of this claim.

Accordingly, if you wish to resolve this matter amicably, please feel free to contact my office within fourteen (14) days. If the matter has not been resolved within that time, we will file a formal claim.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. H. Moss', with a large circular flourish to the right.

Gregory H. Moss
Attorney at Law

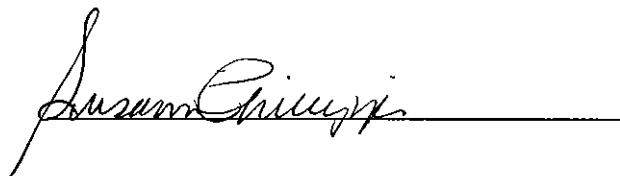
GM/sra

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

CERTIFICATE OF SERVICE

I, the undersigned, a non-attorney, certify that I served the above and foregoing NOTICE OF FILING and NOTICE OF REMOVAL by mailing a copy to the below-listed party of record by depositing the same in the U.S. Mail located at 2 North LaSalle Street, Chicago, Illinois before the hour of 5:00 p.m. on the 14 day of March, 2003 with proper postage prepaid.

[X] Under penalties as provided by law pursuant to
Section 1-109 of the Illinois Code of Civil
Procedure, I certify that the statements set forth
herein are true and correct.

A handwritten signature in cursive script, appearing to read "Susan Chilly", is written over a horizontal line.

Service List:

Mr. Adam Krohn
Krohn & Moss, Ltd.
120 West Madison Street, 10th Floor
Chicago, IL 60602

JS 44
(Rev. 12/96)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DONALD SCHIMMER

DEFENDANTS

JAGUAR CARS, INC.

CLERK
U.S. DISTRICT COURT**03C 1884**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

LaSalle, IL

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Krohn & Moss, Ltd.
120 W. Madison St., 10th Floor
Chicago, IL 60602 (312) 578-9428

ATTORNEYS (IF KNOWN)

Timothy Ray (312) 269-8456
Neal, Gerber & Eisenberg
2 N. LaSalle Street, Ste. 2300
Chicago, IL 60602

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Plaintiff alleges breach of written and implied warranty under Magnuson-Moss Warranty Act, 15 USC 2301, et seq.

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO**VIII. This case**☒ is not a refiling of a previously dismissed action.☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE

3/14/03

SIGNATURE OF ATTORNEY OF RECORD

Timothy Ray

UNITED STATES DISTRICT COURT

1-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of

DONALD SCHIMMER vs. JAGUAR CARS, INC.

DOCKETED
MAR 17 2003

03C
Case Number:

1884

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
JUDGE AMY ST. EVE
JAGUAR CARS, INC..

MAGISTRATE JUDGE BOBRICK

(A)		(B)	
SIGNATURE <i>Timothy Ray</i>		SIGNATURE <i>Tom Noble</i>	
NAME Timothy Ray		NAME Thomas Noble	
FIRM Neal, Gerber & Eisenberg		FIRM Neal, Gerber & Eisenberg	
STREET ADDRESS 2 N. LaSalle Street, Ste. 2300		STREET ADDRESS 2 N. LaSalle Street, Ste. 2300	
CITY/STATE/ZIP Chicago, IL 60602		CITY/STATE/ZIP Chicago, IL 60602	
TELEPHONE NUMBER (312) 269-8456		TELEPHONE NUMBER (312) 269-8400	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) ARDC: 6230099		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) ARDC: 6275600	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER		TELEPHONE NUMBER	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

U.S. DISTRICT COURT
FILED-104
MAR 14 PM 3:20

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